

§ 904.3

15 CFR Ch. IX (1–1–16 Edition)

Judge means Administrative Law Judge.

NIDP means Notice of Intent to Deny Permit.

NMFS means the National Marine Fisheries Service.

NOAA (see *Agency*) means either the Administrator or a designee acting on behalf of the Administrator.

NOPS means Notice of Permit Sanction.

NOVA means Notice of Violation and Assessment of civil penalty.

Party means the respondent and the Agency; a joint and several respondent, vessel owner, or permit holder, if they enter an appearance; and any other person allowed to participate under § 904.204(b).

Permit means any license, permit, certificate, or other approval issued by NOAA under an applicable statute.

Permit holder means the holder of a permit or any agent or employee of the holder, and includes the owner and operator of a vessel for which the permit was issued.

Permit sanction means suspension, revocation, or modification of a permit (see § 904.320).

PPIP means Preliminary Position on Issues and Procedures.

Respondent means a person issued a written warning, NOVA, NOPS, NIDP or other notice.

Settlement agreement means any agreement resolving all or part of an administrative or judicial action. The terms of such an agreement may include, but are not limited to, payment of a civil penalty, and/or imposition of a permit sanction.

USCG means the U.S. Coast Guard.

Vessel owner means the owner of any vessel that may be liable in rem for any civil penalty, or whose permit may be subject to sanction in proceedings under this part.

Written warning means a notice in writing to a person that a violation has been documented against the person or against the vessel which is owned or operated by the person, where no civil penalty or permit sanction is imposed or assessed.

§ 904.3 Filing and service of notices, documents, and other papers.

(a) Service of a NOVA (§ 904.101), NOPS (§ 904.302), NIDP (§ 904.303), Notice of Proposed Forfeiture (§ 904.504), Notice of Seizure (§ 904.501), Notice of Summary Sale (§ 904.505) or Written Warning (§ 904.402) may be made by certified mail (return receipt requested), facsimile, electronic transmission, or third party commercial carrier to an addressee's last known address or by personal delivery. Service of a notice under this subpart will be considered effective upon receipt.

(b) Service of documents and papers, other than such Notices as described in paragraph (a) of this section, may be made by first class mail (postage prepaid), facsimile, electronic transmission, or third party commercial carrier, to an addressee's last known address or by personal delivery. Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to third party commercial carrier, electronic transmission or upon personal delivery.

(c) Whenever this part requires service of a NOVA, NOPS, NIDP, document, or other paper, such service may effectively be made on the agent for service of process, on the attorney for the person to be served, or other representative. Refusal by the person to be served (including an agent, attorney, or representative) of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. In cases where certified notification is returned unclaimed, service will be considered effective if the U.S. Postal Service provides an affidavit stating that the party was receiving mail at the same address during the period when certified service was attempted.

(d) Any documents or pleadings filed or served must be signed:

(1) By the person or persons filing the same,

(2) By an officer thereof if a corporation,

(3) By an officer or authorized employee if a government instrumentality, or

(4) By an attorney or other person having authority to sign.

§ 904.4 Computation of time periods.

For a NOVA, NOPS or NIDP, the 30 day response period begins to run on the date the notice is received. All other time periods begin to run on the day following the service date of the document, paper, or event that begins the time period. Saturdays, Sundays, and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday, or Federal holiday, in which event such period will be extended to include the next business day. This method of computing time periods also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays will be excluded in the computation.

§ 904.5 Appearances.

(a) A party may appear in person or by or with counsel or other representative.

(b) Whenever an attorney or other representative contacts the Agency on behalf of another person with regard to any matter that has resulted in, or may result in, a written warning, a NOVA, NOPS, NIDP, or a forfeiture proceeding, that attorney or other representative shall file a Notice of Appearance with the Agency. Such notice shall indicate the name of the person on whose behalf the appearance is made.

(c) Each attorney or other representative who represents a party in any hearing shall file a written Notice of Appearance with the Judge. Such notice shall indicate the name of the case, the docket number, and the party on whose behalf the appearance is made.

Subpart B—Civil Penalties

§ 904.100 General.

This subpart sets forth the procedures governing NOAA administrative proceedings for the assessment of civil

penalties under the statutes cited in § 904.1(c).

§ 904.101 Notice of violation and assessment (NOVA).

(a) A NOVA will be issued by NOAA and served upon the respondent(s). The NOVA will contain:

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, license, permit, agreement, or order allegedly violated;

(3) The findings and conclusions upon which NOAA bases the assessment;

(4) The amount of the civil penalty assessed; and

(5) Information concerning the respondent's rights upon receipt of the NOVA, and will be accompanied by a copy of the regulations in this part governing the proceedings.

(b) In assessing a civil penalty, NOAA will take into account information available to the Agency concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require.

(c) The NOVA may also contain a proposal for compromise or settlement of the case. NOAA may also attach documents that illuminate the facts believed to show a violation.

§ 904.102 Procedures upon receipt of a NOVA.

(a) The respondent has 30 days from receipt of the NOVA in which to respond. During this time the respondent may:

(1) Accept the penalty or compromise penalty, if any, by taking the actions specified in the NOVA;

(2) Seek to have the NOVA amended, modified, or rescinded under paragraph (b) of this section;

(3) Request a hearing under § 904.201(a);

(4) Request an extension of time to respond under paragraph (c) of this section; or

(5) Take no action, in which case the NOVA becomes a final administrative decision in accordance with § 904.104.

(b) The respondent may seek amendment or modification of the NOVA to